



**The Comptroller General
of the United States**

Washington, D.C. 20548

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Decision

Matter of: Bender Shipbuilding & Repair Co., Inc.--
Reconsideration
File: B-225578.2
Date: July 1, 1987

DIGEST

1. The imposition of an interport differential in bid evaluation did not prejudice the protester where the results of the bidding show that the awardee's bid was low by a significant amount with or without the differential.
2. Protester is not entitled to bid preparation costs or the costs of filing and pursuing a protest where there was no violation of statute or regulation.

DECISION

Bender Shipbuilding & Repair Co., Inc. requests reconsideration of our decision dismissing as untimely a protest filed more than 10 working days after initial adverse action, bid opening, on an agency-level protest.

Although Bender has presented several arguments as to why its protest should not have been dismissed as untimely, we find it unnecessary to address these reasons as Bender's protest and claim are for denial in any event.

Bender's protest is based on the contention that the Navy improperly included interport differentials as a bid evaluation factor by an amendment to the IFB. Bender argues that the use of interport differentials is prohibited and, in the alternative, that even if they are not prohibited, the "last-minute imposition" of them in an amendment was an arbitrary abuse of the Navy's discretion and a breach of the Navy's implied obligation of honest and fair treatment of bidders. Bender states that had not the solicitation initially stated that interport differentials would not be used in the evaluation it would not have worked for 3 weeks preparing a bid as it knew such a differential would make it noncompetitive. Nevertheless, Bender submitted its bid since by the time of the receipt of the amendment most of the bid preparation had been completed.

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The Navy reports that the initial decision not to use interport differentials was based upon incorrect advice to the contracting officer that the imposition of such differentials was prohibited by Congress. Upon receiving contrary advice, approximately 1 week before bids were due, the amendment was issued pursuant to the authority provided by the Federal Acquisition Regulation, 48 C.F.R. § 14.208 (1986). The amendment provided that the differential for Mobile, Alabama, the location of Bender's facility, was \$104,404.90, the highest of any imposed. Although Bender protested the amendment prior to bid opening, it submitted a bid. The low bid and Bender's were as follows:

<u>Bidder</u>	<u>Bid Price</u>	<u>Differential</u>	<u>Evaluated Price</u>
Gulf-Tampa Drydock	\$692,567	\$79,304.56	\$771,871.56
Bender	\$1,143,810	\$104,404.90	\$1,247,799.90

Award was made to the low bidder.

It is clear from the bidding that whether the differential was properly or improperly considered is irrelevant to a determination of the low bidder as Gulf-Tampa is low by a substantial amount with or without the differential. Therefore, Bender was not prejudiced in the evaluation.

With regard to Bender's claim for bid preparation costs and the costs of filing and pursuing its protest, our Bid Protest Regulations provide that if we determine that a solicitation, proposed award or award does not comply with statute or regulation we may declare the protester entitled to such costs. 4 C.F.R. § 21.6(d) (1986). Since we have made no such determination in this case, the claim is denied. Spectrum Leasing Corp., B-218323.3, B-218785.3, July 14, 1986, 86-2 C.P.D. ¶ 56.

for Seymour Sp...
 Harry R. Van Cleve
 General Counsel